

# Native American Graves Protection and Repatriation Review Committee

## Dispute Procedures

**October 2012**

**I. Authority.** Pursuant to 25 U.S.C. 3006 (c), the Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for facilitating the resolution of disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of human remains and other cultural items, including convening the parties to the dispute if deemed desirable.

### **II. Definitions.**

A. For the purpose of these procedures, definitions from the Native American Graves Protection and Repatriation Act (NAGPRA) apply (see 25 U.S.C. 3001 and 43 CFR 10.2).

B. Interested party. An interested party (43 CFR 10.17 (b)) is:

1. the Federal agency or museum that has disputed human remains or other cultural item(s) in its possession or control; and
2. any lineal descendant, Indian tribe, or Native Hawaiian organization that is, or is likely to be, geographically or culturally affiliated with the disputed human remains or other cultural item(s).

C. An interested party may authorize an individual or organization to represent its interests for the purposes of the Review Committee's consideration of a dispute.

**III. Potential Disputes.** The following matters are appropriate for consideration by the Review Committee:

A. Whether objects or items fit the definitions of human remains and other cultural items as provided in 25 U.S.C. 3001;

B. Determination of the cultural affiliation of particular human remains or other cultural items;

C. Appropriate disposition of particular human remains or other cultural items; and.

D. Competing claims by two or more claimants.

#### **IV. Dispute Procedures.**

A. Alternative Dispute Resolution. The Review Committee believes that disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums should be resolved at the lowest organizational level and earliest time possible and strongly encourages the use of alternative methods of dispute resolution. Interested parties involved in potential disputes may write to the Designated Federal Officer (DFO) [National NAGPRA Program, National Park Service, 1849 C Street NW (2253), Washington, DC 20240-0001] to discuss the possible application of alternative methods of dispute resolutions. Requests to consider alternative methods of dispute resolution should include a brief outline of the nature of the dispute, identification of all interested parties, and a brief history of attempts to resolve the dispute. The DFO may contact the interested parties and provide a list of dispute resolution professionals to facilitate the resolution of disputes. The interested parties may also request to have a teleconference with the DFO to discuss any possible solutions to resolve the dispute prior to a formal request to bring the dispute to the Review Committee. The decision as to whether to use alternative methods of dispute resolution will be made by the interested parties.

B. Requesting the Review Committee to facilitate the resolution of a dispute. Written requests for the Review Committee to facilitate the resolution of a dispute shall be directed to the DFO, [NAGPRA Review Committee, National Park Service, National NAGPRA Program, 1201 Eye Street, NW., 8<sup>th</sup> Floor (2253)] three (3) months prior to the date of the scheduled Review Committee meeting.

1. The written request should include the following documentation:

- a. Name of person[s] who will make the presentation to the Review Committee. Identify all individuals by name and title,
- b. Statement outlining the basis of the dispute. Provide information that demonstrates that the claim(s) meet the standards of NAGPRA, such as the following:

-information that supports the establishment that the item(s) are cultural items is (sacred object or object of cultural patrimony or human remain or funerary object) pursuant to NAGPRA definitions. (25 U.S.C. 3001(3); 43 CFR 10.2(d)).

-information that demonstrates that the tribe/lineal descendant/Native Hawaiian Organization has cultural affiliation with particular human remains or other cultural items.

-information regarding the right of possession to the cultural item(s) at issue.

c. If the dispute relates to competing claims in which the Federal agency or museum cannot determine which requesting party is the most appropriate claimant, provide information to substantiate the claim(s). .

d. Copy of any primary documents, including a written document that a claim has been rejected by the other party(ies), and other documents that are directly relevant to the issues in dispute, including but not limited to field notes, catalogue records, consultation documents, relevant studies, and other pertinent data;

e. Statement describing the requesting party's(ies') interpretation of the facts;

f. Statement of the requesting party's(ies') understanding of the other involved party's(ies') interpretation of the facts;

g. Summary of the consultation record;

h. Statement of previous efforts to resolve the dispute, including the results of alternative dispute resolution efforts, if applicable; and

i. Proposed findings as to contested facts and/or recommendations to the disputing parties being sought from the Review Committee.

j. Statement of whether the presentation will begin and/or conclude with a ceremonial activity and whether any presenters will be addressing the Review Committee in their Native language and a translation provided.

2. The DFO will reply to the requesting party acknowledging receipt of the request for consideration of a dispute within fourteen (14) days from receipt. The acknowledgment letter may include requests for clarification or additional information requested in above paragraph IV. B. 1

C. Review Committee chair and DFO consultation. Subsequent to the receipt of the information set forth above, the DFO will provide the written request and supporting information to the Review Committee chair. The DFO will then consult with the chair to determine the appropriate response to the written request for consideration of the dispute. Requests that have not met the identified

requests for information in paragraph IV. B.11 or are not otherwise appropriate for consideration by the Review Committee may be referred back to the requesting party(ies).

D. Contacting the other party(ies) to the dispute. After consultation between the chair and the DFO, the DFO will send the following correspondence to the other interested party(ies):

1. Copy of the requesting party's(ies') initial correspondence requesting the Review Committee to facilitate resolution of a dispute, including the information provided in response to IV.B.1;
2. Copy of the DFO's acknowledgment letter sent to the requesting party(ies); and
3. Request to the other party(ies) for similar information to that described in above paragraph IV.B.1.

E. Review Committee chair and DFO consultation. Upon receipt of information from the other party(ies) the DFO will then consult with the chair to determine the appropriate response to the written request for consideration of the dispute.

1. If the chair and DFO decide jointly that additional information is needed to determine whether the dispute is appropriate for the Review Committee to consider, the DFO will send a letter to the interested parties. Failure by the requesting party(ies) to respond to the request for additional information within thirty (30) days of the date of the request will result in the proposed dispute being deemed no longer active. The DFO will inform the chair of the status of the proposed dispute, send a letter regarding the proposed dispute status to the interested parties, and place the proposed dispute on inactive status. If the DFO receives a letter providing the additional information and requesting that the proposed dispute be re-activated, the DFO and chair will consult and jointly decide whether the proposed dispute is appropriate for consideration by the Review Committee.
2. If the chair and DFO decide jointly that consideration of the dispute is not appropriate, the DFO will send a letter to the requesting party(ies) explaining why the Review Committee will not consider the dispute. A copy of the letter will be sent to the other interested party(ies) to the dispute. The requesting party(ies) may appeal a decision that consideration of a dispute is not appropriate at a subsequent meeting of the Review Committee by presenting new information relevant to the dispute. The request for an appeal shall be sent to the DFO in writing.
3. If the chair and the DFO decide jointly that consideration of the dispute is appropriate, the DFO will send a formal notification to the requesting party via registered/return receipt mail service. A copy of this notification will be sent to the other interested party(ies) to the dispute.

F. Before hearing a dispute.

1. After notification to the interested parties, the dispute will be scheduled for consideration at a Review Committee meeting;
2. The DFO will forward copies of all relevant materials to the Review Committee members no later

than thirty (30) days prior to the scheduled Review Committee meeting;

3. The DFO will inform all interested parties of the time and place of the meeting when the dispute will be considered and invite them to send representatives to present the dispute to the Review Committee no later than thirty (30) days prior to the scheduled Review Committee meeting; and

4. The DFO will publish a notice in the Federal Register of the time and place of the meeting at which the dispute will be considered.

#### G. Hearing a dispute.

1. The Review Committee will consider only one (1) dispute per day. The Review Committee will consider the facts of the dispute, listen to presentations by representatives of the interested parties, question the interested parties' representatives, and after due consideration make "advisory findings as to contested facts, and [make] recommendations to the interested parties or to the Secretary as to the proper resolution of disputes consistent with [NAGPRA] regulations and the Act." (43 CFR 10.17(b))

2. The Review Committee recognizes that a disputing party may be by its cultural protocols to conduct a ceremonial activity. The Review Committee will request that attendees at the Review Committee meeting respect the sanctity of the ceremonial activity and objects that may be brought to the meeting.

3. Since the interested parties have provided their written documentation to the Review Committee, each party will be limited to 60 minutes to present information relative to the dispute. Presentations should be limited to the definitions and supporting information as outlined in NAGPRA. If the presentation begins with a ceremonial activity and if translation of Native language is required, the time allocation will be extended to 90 minutes for each party's presentation.

4. Consensus is the goal for Review Committee findings and recommendations. When consensus is not possible, majority and minority reports may be part of the Review Committee's findings and recommendations.

5. . The DFO will publish the Review Committee's findings and recommendations in the Federal Register over the chair's signature no later than four (4) months after the Review Committee meeting, and will send a copy of the published Federal Register notice to all interested parties. If the Review Committee's findings and recommendations have not been published in the Federal Register within the four (4) month period after the Review Committee meeting, the DFO will contact the disputing parties to advise them of the delay and basis of the delay.

H. If interested parties fail to reach resolution. If the interested parties fail to reach resolution following notification of the Review Committee's findings and recommendation, any interested party

may resubmit the dispute to the Review Committee provided that the interested party has substantial new information to offer for the Review Committee's consideration. The procedure for requesting reconsideration is the same as the procedure for the original request.

**I. Contact.**

1. Interested Parties. a. The interested parties are encouraged to continue discussions after a dispute is proposed for Review Committee consideration. Interested parties should inform the DFO of any resolution reached prior to the Review Committee's consideration of the dispute. b. Once a dispute has been proposed for Review Committee consideration, interested parties or their representatives may not contact Review Committee members directly.
2. Review Committee: Once a dispute has been proposed for Review Committee consideration, Review Committee members may not contact the interested parties directly.
3. Contact between the interested parties or their representatives and the Review Committee or individual Review Committee members shall be through the DFO or in the setting of a Review Committee meeting only.

**V. Conflict of Interest.**

A. Situations may arise in which individual Review Committee members or the DFO have or may appear to have a conflict of interest regarding a particular dispute. In such circumstances, the member or DFO will recuse themselves from the Review Committee's consideration of the dispute.

B. In the event and for the time that the DFO must recuse him/herself as DFO during consideration of a dispute, the DFO will delegate his/her responsibilities to another Federal employee who does not and would not appear to have a conflict of interest.

**VI. Public Access to this Document.** This document will be posted on the National NAGPRA Website.

**APPROVED:**

/s/ Rosita Worl, Chair

/s/ (insert DFO signature here upon approval)